

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

April 16, 2010

David Hume, IV, Esquire
Deputy Attorney General
114 East Market Street
Georgetown, DE 19947

N440 STATE MAIL
David Buchanan
SBI: 002
Sussex Correctional Institution
P.O. Box 500
Georgetown, DE 19947

Re: *State of Delaware v. David J. Buchanan*
ID 0801031784, 0803017116

Dear Mr. Hume and Mr. Buchanan:

Mr. Buchanan, the defendant, was convicted by a jury on September 24, 2008 for Resisting Arrest, Criminal Contempt, three counts of Possession of a Deadly Weapon and Ammunition by a Person Prohibited, and two counts of Carrying a Concealed Deadly Weapon. Following direct appeal to the Supreme Court, the foregoing convictions were affirmed. A Burglary in the Third Degree conviction, however, was reversed.

Mr. Buchanan has filed a motion for return of property under Superior Court Criminal Rule 41(e).¹ Mr. Buchanan seeks the return or value of all real and personal property which he claims were taken by his former wife and her present husband, Barbara and David

¹ Docket entry 119.

Richards, in conjunction with the State Police. He claims this property includes “firearm collection, computers, phones, documents, livestock, real estate deeds, land use leases, electronic stored material, house contents, food, vehicles, seed grain, grain contracts, business plans, checks, tools, machinery farm chemicals, fuel and personal property.” He claims the items were obtained illegally and as a result of trespass or violations of alleged Bankruptcy Court orders. The motion attacks the jurisdiction of the Family Court which ejected him from marital property and ordered its sale. A background of defendant’s pattern of bad faith litigation in the Supreme Court, the Chancery Court, the Superior Court and the Bankruptcy Court is discussed in *Buchanan v. Wallace*, and this decision is incorporated herein.²

Rule 41(e) provides that “A person aggrieved by the deprivation of property seized by the police may move the court for the return of the property on the ground that such person is entitled to lawful possession of the property.” The Superior Court may decide such a motion even after pending charges are dismissed.³ However, a motion must be filed within a year from the sentencing date.⁴

Upon review of the record, Mr. Buchanan’s motion was filed on Tuesday, December 15, 2009. He was sentenced on Friday, December 12, 2008 and, therefore, his motion is

² *Buchanan v. Wallace*, Del. Super., C.A. No. S08C-08-006, Graves, J. (Dec. 29, 2009); Docket entry 125.

³ *State v. Lloyd*, 552 A.2d 498, 499 (Del. Super. 1988).

⁴ *Dorn v. State*, 867 A.2d 901 (Del. 2005); *Crawford v. State*, 859 A.2d 624, 628 (Del. 2004). The *Crawford* case involved a Criminal Rule 41(e) motion referenced in *State v. Crawford*, 2003 WL 21915866 (Del. Super. Aug. 4, 2003).

time- barred. Although the Burglary in the Third Degree conviction was reversed, the other convictions in the December 12, 2008 sentencing order were affirmed. The December 12, 2008 sentencing order was simply modified by deleting one charge on October 2, 2009. The sentencing date is the benchmark for the one-year period for applications to return property. Other possible time frames were considered but not adopted by the Supreme Court.⁵

Not only is Mr. Buchanan's petition late but it would not have merit upon review of the trial record. The convictions arise from events on January 26, 2008 and March 13, 2008. In January, Mr. Buchanan was arrested at his former marital home where he was not supposed to be. Later, the Richards were attempting to get the property ready for sale. They found a shotgun and ammunition hidden in the basement. Before then, David Richards found 13 firearms, ammunition, and a cross bow. These items were given to the police thereafter.

On March 13, 2008, Mr. Buchanan was prohibited from possessing firearms by a Family Court Protection from Abuse Order. While driving, he was stopped because his license was suspended or revoked. The police recovered a .45 caliber handgun, a .22 caliber handgun, and .45 caliber ammunition. A suppression hearing was held prior to trial, and defendant's claim that the police lacked a proper basis to stop and seize the weapons was denied.

As a result of the Class D felony convictions for Possession of a Deadly Weapon by a Person Prohibited and the Class G felony convictions of Carrying a Concealed Deadly Weapon, Mr. Buchanan cannot possess weapons and ammunition like those seized on March

⁵ *Crawford, supra.*

13 or given to the police by the Richards.⁶ Consequently, the State cannot return weapons to Mr. Buchanan which, if done, would undermine the confidence the public has a right to expect in the criminal justice system. The State Police should dispose of them as if Mr. Buchanan had been prohibited at the time the weapons were received.⁷

Rule 41(e) permits the return of evidence after trial.⁸ The remedy is like a shield which should not be turned into a sword where the proceeding degenerates into global legal assaults by litigants with personal agendas. In a plethora of filings, Mr. Buchanan seeks to relitigate civil matters that were previously dismissed. He seeks to relitigate issues of search and seizure notwithstanding the pretrial decision. A disappointed litigant cannot be permitted to manipulate a Rule 41(e) motion into a second bite of the proverbial apple. It is true that legal objections not made under the Rule 41(f) suppression hearing are waived, and, in any event, the Richards are private citizens whose actions would not be the proper subject of a

⁶ 11 *Del.C.* § 1448(9)(c); 11 *Del.C.* § 1442. A cross bow is a deadly weapon. *Simon v. State*, 985 A.2d 391 (Del. 2009).

⁷ 11 *Del.C.* § 2311(c).

⁸ At trial, the State introduced 20 exhibits. Exh. 1 is a digital picture of a jacket where the shotgun was hidden; Exh. 2 is a copy of a Family Court Order; Exh. 3 is a copy of Family Court Order; Exh. 4 is a copy of a Family Court Order; Exh. 5 is a damaged lock set belonging to the Richards; Exh. 6 is an aerial photograph; Exh. 7 is an aerial photograph; Exh. 8 is a shotgun related to the Possession of a Deadly Weapon During Commission of a Felony charge that defendant was acquitted; Exh. 9 is ammunition; Exh. 10 is ammunition; Exh. 11 is a gun bag where weapons, ammunition, and the receipt were found; Exh. 12 is ammunition; Exh. 13 is a receipt from Shooter's Choice; Exh. 14 is the .22 caliber handgun; Exh. 15 is the .45 caliber handgun; Exh. 16 is a copy of a Family Court Order; Exh. 17 is a copy of a Family Court service document; Exh. 18 is a copy of a Protection from Abuse Order; Exh. 19 is a service entry; Exh. 20 is a DVD showing Defendant's purchase of the .45 caliber ammunition from Shooter's Choice. Even if Mr. Buchanan had made a timely filing, the State should be able to retain otherwise lawful evidence, like the jacket and bag, through the one-year Rule 61 time period. The Supreme Court mandate on the direct appeal is dated September 25, 2009.

suppression motion.

Mr. Buchanan continues to engage in vexatious litigation. He has moved to have Mr. Hume, the trial prosecutor, and Detective Wallace placed in contempt, and he requested a subpoena to question the credentials of the Attorney General as to whether or not he is a bona fide member of the Delaware Bar. He has sought broadly based subpoenas for individuals who were involved in the sale of the property under the auspices of the Family Court and who were not involved in the trial of the criminal case. All of this is beyond the pale.⁹

The Superior Court is hard pressed to handle its criminal and civil matters. The Court has time demands to decide cases within speedy trial and case management limitations. Mr. Buchanan's filings reflect a personal vendetta; they consume precious time and resources. This Court must protect its ability to attempt to do justice in other cases. Consequently, under the inherent authority of this Court, the motion is dismissed with prejudice. No papers or filings will be accepted by the Superior Court without prior approval of a judge except as may be necessary for Mr. Buchanan to appeal this decision to the Supreme Court.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

RFS/cv

cc: Prothonotary

⁹ Docket entries 135 - 137.

